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MAILED

APR 14 2010

OFFICE OF PETITIONS

In re Application of :
Creswell et al. : DECISION ON APPLICATION
Application No. 10/595,281 : FOR
Filed: November 22, 2006 : PATENT TERM ADJUSTMENT
Atty Docket No. 70038-0068 :

RECEIVED:
McGarry Bair PC
Intellectual Property Consultants
By bmv at 11:09 am,
4/16/10

DOCKETED:
McGarry Bair PC
Intellectual Property Consultants
By bmv at 11:36 am,
4/16/10

This is a decision on the "Request for Reconsideration of Patent Term Adjustment Under 35 U.S.C. § 154 and 37 C.F.R. § 1.705(b)," filed March 24, 2009. Applicants request that the initial determination be corrected from a patent term extension of zero (0) days to a patent term adjustment of one hundred forty-seven (147) days.

The application for patent term adjustment is GRANTED.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **one hundred forty-seven (147)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 18, 2009, the Office mailed the Determination of Patent Term Extension under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term extension (PTE) to date is 0 days. On March 24, 2009, applicants timely submitted an application for patent term adjustment (with required fee)¹. Applicants maintain that the initial determination of patent term adjustment is 147 days including

¹ PALM records indicate that the Issue Fee payment was filed on June 11, 2009.

177 days for Office failure to mail a first action under 35 U.S.C. 132 and 30 days for applicant delay in filing a response.

The record supports a conclusion that the patent issuing from the application is not subject to a terminal disclaimer.

Applicants are correct. As this international application was filed after May 29, 2000, the provisions of 35 U.S.C. 154(b) related to adjustment of patent term due to administrative delays apply. Accordingly, pursuant to § 1.703(a)(1), a period of adjustment of 177 days should have been entered for Office delay in mailing the first Office action (counting the number of days in the period beginning on, January 23, 2008, the day after the date that is fourteen months after the date on which the application fulfilled the requirements of 35 U.S.C. 371, and ending on the date of mailing of an action under 35 U.S.C. 132, July 17, 2008).

Additionally, pursuant to § 1.704(b), a period of reduction of 30 days for applicant delay should have been entered. Applicants took in excess of three months to file a response to the non-final Office action mailed September 10, 2008. A response was not received until January 9, 2009, three months and 30 days later.

In view thereof, the determination of patent term adjustment at the time of the mailing of the Notice of Allowance is one hundred forty-seven (147) days.

The revised patent term adjustment calculated at the time of the issuance of the patent (and reflected on the issued patent) should properly include any adjustment to term under the provisions of patent term adjustment for examination delay. Any request for reconsideration of the patent term adjustment indicated on the patent is by way of a request for reconsideration of patent term adjustment pursuant to 37 CFR 1.705(d). Any such request must be filed within 2 months of issuance of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent.

PALM INTRANET

Day : Friday
Date: 4/9/2010
Time: 07:32:53

PTE Calculations for Application: 10/595281

Application Filing Date:	11/22/2006	PTO Delay (PTO):	0
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTE (days):	147
PTO Delay Adjustment:	147		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
47	04/09/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		30	
46	04/09/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	177		
33	03/18/2009	MAIL NOTICE OF ALLOWANCE			
32	03/13/2009	ISSUE REVISION COMPLETED			
31	03/13/2009	DOCUMENT VERIFICATION			
30	03/15/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
29	03/12/2009	NOTICE OF ALLOWABILITY			
25	02/21/2009	DATE FORWARDED TO EXAMINER			
24	01/09/2009	RESPONSE AFTER NON-FINAL ACTION			
23	01/09/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
22	09/10/2008	MAIL NON-FINAL REJECTION			
21	09/09/2008	NON-FINAL REJECTION			
20	08/20/2008	DATE FORWARDED TO EXAMINER			
19	08/18/2008	RESPONSE TO ELECTION / RESTRICTION FILED			
18	08/18/2008	NEW OR ADDITIONAL DRAWING FILED			
17	07/17/2008	MAIL RESTRICTION REQUIREMENT			
16	07/17/2008	REQUIREMENT FOR RESTRICTION / ELECTION			
14	12/22/2007	CASE DOCKETED TO EXAMINER IN GAU			
11	09/21/2007	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
10	08/30/2007	PG-PUB ISSUE NOTIFICATION			
8	06/03/2007	APPLICATION DISPATCHED FROM OIPE			
7	11/22/2006	371 COMPLETION DATE			
6	05/29/2007	SENT TO CLASSIFICATION CONTRACTOR			
5	05/29/2007	NOTICE OF DO/EO ACCEPTANCE MAILED			

4	11/22/2006	ADDITIONAL APPLICATION FILING FEES			
3	11/22/2006	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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